

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

EMMA C., et al.,

Plaintiffs,

v.

DELAINE EASTIN, et al.,

Defendants.

Case No. 96-cv-04179-TEH

ORDER TO SHOW CAUSE

It has come to the Court's attention by way of memorandum from the Court Monitor (Docket No. 2167) that Defendant California Department of Education ("CDE") has not followed the process set forth in the Fifth Joint Statement for consideration of proposed substantive changes in the state monitoring system, which was agreed to by the parties and approved by the Court. *See* Fifth Joint Statement at 9-10 (Docket No. 1799).

The Court "possess[es] [the] inherent authority to initiate contempt proceedings for disobedience to [its] orders." *Young v. U.S. ex rel Vuitton et Fils S.A.A.*, 481 U.S. 787, 793 (1987); *Spallone v. United States*, 493 U.S. 265, 276 (1990). A party may be held in civil contempt where it "failed to take all reasonable steps within the party's power to comply [with a specific and definite court order]." *In re Dual-Deck Video Cassette Recorder Antitrust Litig.*, 10 F.3d 693, 695 (9th Cir. 1993).

The Court reviewed and approved the Fifth Joint Statement in an Order on January 2, 2013. Docket No. 1803. The Order was definite and specific, and furthermore, it adopted the process negotiated and set forth by the parties. The parties have not communicated to the Court any intention of revising the process set forth in the Fifth Joint Statement, nor has CDE expressed any inability to comply. CDE has simply failed to comply with the Fifth Joint Statement, and therefore with this Court's Order.

Accordingly, Defendant California Department of Education is hereby ORDERED TO APPEAR on **Monday, June 13, 2016** at 10:00 AM in Courtroom 2 AND SHOW

1 CAUSE as to why it should not be held in civil contempt and sanctioned for failure to
2 comply with this Court's January 2, 2013 Order. Plaintiffs shall attend the hearing.
3 District Defendants may, but are not expected or required to, attend the hearing.


4 CDE shall submit a response to this Order to Show Cause no later than **April 25,**
5 **2016**, containing the following: (1) An explanation as to why CDE did not follow the
6 process set forth in the Fifth Joint Statement; (2) why CDE should not be held in civil
7 contempt for failure to comply with this Court's order, and why sanctions should not be
8 imposed to coerce compliance; (3) a detailed account of CDE's proposed changes to its
9 state-level monitoring system, which will serve as notice to the parties and the Court
10 Monitor pursuant to the Fifth Joint Statement; and (4) CDE's position on how each of the
11 proposed changes affects CDE's compliance with the CAP going forward, and what
12 action, if any, the Court should take.

13 Plaintiffs shall submit a response no later than **May 16, 2016**, containing the
14 following: (1) whether Plaintiffs object, or waive objections, to each of CDE's proposed
15 changes; and (2) Plaintiffs' position on how each of the proposed changes affects CDE's
16 compliance with the CAP going forward, and what action, if any, the Court should take.

17 If Plaintiffs object to any of CDE's proposed changes, the parties shall engage in a
18 meet-and-confer discussion no later than 10 days from the date of Plaintiffs' response.
19 The Court Monitor shall participate in the meet-and-confer. If the meet-and-confer is
20 unsuccessful, the parties shall inform the Court Monitor of their respective positions within
21 a week of the expiration of the meet-and-confer period, and the Court Monitor shall then
22 make determinations regarding the objections.

23
24 **IT IS SO ORDERED.**

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26 Dated: 03/31/16

27 
THELTON E. HENDERSON
United States District Judge